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PLEASE REPLY TO ROSELAND, NJ

April 21, 2011

VIA ECF AND FIRST-CLASS MAIL

Honorable Mark Falk, U.S.M.J.
 United States District Court for the District of New Jersey
 Martin Luther King Jr. Bldg. & U.S. Courthouse
 50 Walnut Street
 Newark, New Jersey 07101

**Re: Astellas US LLC v. Nycomed US Inc.,
 Civil Action Nos. 10cv5599 (WJM/MF); 10cv6326 (WJM/MF)**

Dear Judge Falk:

This firm, together with WilmerHale, writes on behalf of Defendant Nycomed US Inc. ("Nycomed") to respectfully request that the Court issue an Order granting Nycomed leave to amend its Local Patent Rule 3.6(b) Invalidity and Rule 3.6(d) Non-Infringement Contentions pursuant to L. Pat. R. 3.7. Plaintiffs Astellas US LLC and Astellas Pharma, Inc. (collectively "Plaintiffs" or "Astellas"), have consented to Nycomed's proposed amendments.

As the Court is aware, Local Patent Rule 3.7 provides that leave to amend contentions may be granted "by order of the Court upon a timely application and showing of good cause." See L. Pat. R. 3.7. Nycomed respectfully submits that good cause exists for Nycomed's proposed amendment and Nycomed's application is timely. Specifically, Plaintiffs recently served their Infringement Contentions pursuant to L. Pat. R. 3.6(f) and their Preliminary and Joint Claim Construction submissions pursuant to L. Pat. R. 4.2-4.3. Nycomed could not reasonably have anticipated the arguments Plaintiffs set forth in these documents. Thus, Nycomed could not have presented certain invalidity and non-infringement arguments that became evident in view of Plaintiff's contentions and claim construction submissions before February 7, 2011 — the date its

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April 21, 2010
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Local Patent Rule 3.6(b) and (d) Invalidity and Non-Infringement Contentions were originally served.

In addition, the minor changes proposed by Nycomed will not create delay or prejudice. *See e.g., THF Publ'ns, Inc. v. Doskocil Mfg. Co.*, 705 F. Supp. 2d 361, 367 (D.N.J. 2010) (granting leave to amend L. Pat. R. 3.1 infringement contentions where party seeking leave “demonstrated that it was sufficiently diligent in seeking to amend” and “allowing the proposed amendments at this point in the litigation will not cause any significant delay or prejudice” to the opposing party). Fact discovery in this litigation is ongoing and expert discovery has not yet begun.

Nycomed's proposed changes should have no impact on the claim construction issues in dispute and therefore should require no further claim construction submissions. Nycomed outlined the proposed amendments to Plaintiffs and obtained their consent to the amendments before the parties' Joint Claim Construction submission was due.

For the foregoing reasons, Nycomed respectfully requests that the Court grant Nycomed's application on consent for leave to amend its February 7, 2011, Invalidity and Non-Infringement Contentions. A proposed form of Order is enclosed.

As always, we thank Your Honor for your consideration of the foregoing and we are available to discuss these issues at the Court's convenience.

Respectfully submitted,

s/ Hector D. Ruiz

Hector D. Ruiz

Encl.
cc: All counsel of record (*via* ECF and email)